



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,154	12/17/2001	Christopher L. Molloy	FIS920010174US1	3193

29505 7590 03/01/2005

DELIO & PETERSON, LLC  
121 WHITNEY AVENUE  
NEW HAVEN, CT 06510

EXAMINER

TRUONG, CAMQUY

ART UNIT PAPER NUMBER

2127

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/023,154

Applicant(s)

MOLLOY ET AL.

Examiner

Camquy Truong

Art Unit

2127

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/17/01 & 5/14/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-18 are presented for examination.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-18 are rejected under 35 U.S.C. 103 as being unpatentable over Berg (U.S. Patent 5,872,911) in view of Choudhury et al (U.S. Patent 5,719,854).

4. As to claims 1, 7 and 13, Berg teaches the invention substantially as claimed including: An automated method of managing computing resources having a workload of a given type (col. 6, lines 17-47), the method comprising:

Providing resource data collectors for collecting data regarding performance of the resources, in accordance with the type of workload (col. 3, lines 16-37; col. 10, lines 37-47; col.13, lines 9-10);

Developing a forecast of utilization of the resources, based on historical performance data (col.7, lines 40-47; col. 11, lines 1-3; col.13, lines 12-14)

Collecting real-time performance data regarding the resources running under the workload (col. 6, lines 20-22; col. 7, lines 27-31; col.10, lines 65-col.11, line 1; col. 13, lines 10-11);

Analyzing the real-time performance data and the forecast to identify a critical resource (col. 6, lines 9-11; col.11, lines 9-12; col. 13, lines 16-18).

5. Berg does not explicitly teach to automatically adjusting a capacity of the resource to provide steady-state performance of said resource under said workload. However, Choudhury teaches automatically adjusting a capacity of the resource to provide steady-state performance of said resource under said workload (col. 8, lines 52-54; col. 9, lines 51-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Berg and Choudhury because Choudhury's automatically adjusting a capacity of the resource to provide steady-state performance of said resource under said workload would provide more efficient multiple grade of service to customer including adjusting the capacities of the resources when customer demand is changing.

6. As to claims 2, 8 and 14, Choudhury teaches resources comprise a server network (col. 1, lines 48-49).

7. As to claims 3, 9 and 15, Berg teaches setting threshold values for said performance data and identifying the resource in accordance with the threshold values (col. 7, lines 49-59).

8. As to claims 4-5, 10-11 and 16-17, Berg teaches:

Notifying a user of the computing resources when the critical resource is a hardware resource (col. 12, lines 12-13; col. 14, lines 3-4); and

Choudhury teaches:

Notifying the user when the capacity of said hardware resource is adjusted (col. 8, lines 52-55).

9. As to claims 6, 12 and 18, Berg and Choudhury do not explicitly teach the additional hardware resources are selected from the group consisting of CPUs, computer memory and computer disk storage. However, it is well known to those skilled in the art that CPUs, computer memory and computer disk storage are all computer resources that are required for Berg and Choudhury's system to perform their functions.

### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US.Pat. No. 6, 574,587 to Waclawski.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camquy Truong whose telephone number is (571) 272-3773. The examiner can normally be reached on 8AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3756.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Camquy Truong

February 16, 2005

  
MENG-AI T. AN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100